



Principles of statutory construction bind this Court to interpret plain language of a statute “to mean exactly what it says” and to engage in judicial construction only if the language in the statute is ambiguous. *Ex parte Alabama Great Southern R.R.*, 788 So.2d 886, 889 (Ala.2000), quoting *Blue Cross & Blue Shield v. Nielsen*, 714 So.2d 293, 296 (Ala.1998). The Legislature stated in § 15-22-36(b), Ala.Code 1975, with specificity and particularity, that “all other portions of the file shall be privileged.” A plain reading of the statute indicates that the Legislature created an absolute privilege to provide individuals and entities an unfettered opportunity to provide information to the Board, without exposing the individuals and entities to *public scrutiny* and potential retaliation. To hold otherwise, this Court would have to engage in improper judicial construction.

The Board is legally bound to obey the absolute privilege enumerated in Ala. Code §15-22-36(b) or be subject to a felony conviction under Ala. Code §15-22-39.

*State v. Stallworth*, 941 So.2d 327 (Ala. Crim. App. 2006), states:

In *Ex parte Alabama Board of Pardons & Paroles*, the Alabama Supreme Court stated: “Section 15-22-36(b), Ala.Code 1975, clearly and unambiguously establishes an absolute privilege that the Board is legally bound to obey and the circuit court is under a duty to uphold.” 814 So.2d at 873. In *Jackson*, this Court stated: “[T]he circuit court's order, which allows access to the Board's files, directs the Board to violate § 15-22-36(b), Ala.Code 1975. The records maintained by the Board are not subject to inspection.” 910 So.2d at 809. Clearly, based on established precedent the circuit court's order directing the Board to turn over its records directed the Board to violate § 15-22-36(b), Ala.Code 1975.

See also *Ex parte Perkins*, 920 So.2d 599 (Ala. Crim.App. 2005). The law is well settled that Alabama parole files are absolutely privileged and are not subject to inspection.

2. In relation to *probation* records, §15-22-53(b), Ala. Code 1975, states:

“[A]ll reports, records and data assembled by any probation officer and referred to the court shall be *privileged* and shall not be available for public inspection *except upon order of the court to which the same was referred*”. The Board is not at liberty to release probation records without a court order, as prescribed in Ala. Code §15-22-53(b).

The court that ordered the assembly of the probation records and ultimately ordered that a

particular prisoner be placed on probation has the authority to waive the privilege enumerated in Ala. Code §15-22-53(b) and to order the Board to release the probation records of said probationer. The Board does not have the authority to waive the privilege enumerated in Ala. Code §15-22-53(b).

**WHEREFORE THE PREMISES CONSIDERED**, the Board objects to the subpoena seeking its records and moves the Court to ***QUASH*** the subpoena.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing, by placing same in the United States Mail, postage prepaid, and properly addressed as follows:

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Done this 12<sup>TH</sup> day of MAY, 2008.

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